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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1940

State of Texas et al
vs

In Re Mission Independent School District Seeking a Composition of its Indebtedness under the Acts of Congress of August 16, 1937, 50 Stat. 655, of June 22, 1938, 52 Stat. 940, and of June 28, 1940, Sections 401 to 404, Inc., Title 11, U. S. C. A. Amendatory and Supplementary of the National Bankruptcy Act.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

GERALD C. MANN
Attorney General of Texas
GEO. W. BARCUS
CLARENCE E. CROWE
CLAUD O. BOOTHMAN
OCIE SPEER,
Assistant Attorneys General
Attorneys for Petitioners.

FIRM FOUNDATION—AUSTIN

INDEX

	Pages
Opinions Below	2
Jurisdiction	2
Questions Presented	2
The Facts of the Case	2-4
Specification of Error	4
Reasons for Granting the Writ	4-6
Brief of Authorities and Argument	7-17

AUTHORITIES

Altgelt v. Gutzeit, 187 S. W. 220	11
Archey v. State, 59 S. W. (2) 406	11
Austin v. G. C. & S. F. Ry. Co., 45 Tex. 234 (267)	14-15
Board of Insurance Commissioners v. Sproles Motor Freight Lines, 94 S. W. (2) 769	11
Constitution of Texas Article III, Sec. 35	2, 4, 10
Commonwealth Ins. Co. of N. Y. v. Finegold, 183 S. W. 833	11
Consolidated Underwriters v. Kirby Lbr. Co., 267 S. W. 703	10, 12-13
Dark v. Youngblood, 202 S. W. 116	12
Dellinger v. State, 28 S. W. (2) 537	11
Ex parte Flake, 149 S. W. 146	12
Ex parte White, 198 S. W. 583	12

	Page
Re Missouri Ind. Sch. District 116 Fed. (2) 175	2-5
Re Mission Ind. Sch. Dist. 35 Fed. Supp. 37	2
Harris v. Prince, 98 S. W. (2) 1022, 121 S. W. (2) 983	11
Katz v. State, 54 S. W. (2) 130	11
Mosier v. State, 234 S. W. 225	12
McPherson v. Camden Fire Ins. Co., 222 S. W. 211	11
National Live Stock Ins. Co. v. Gomillion, 178 S. W. 1050	11
Pottorff v. El Paso-Hudspeth Counties Road Dist., 62 Fed. (2) 498	13-14
Revised Civil Statutes Article 10, Sub. 8	9
Schaff v. Merchant, 250 S. W. 465	11
Snyder v. Compton, 28 S. W. 1061	15
State v. Schlitz Brewing Co., 59 S. W. 1033	15-16
Sutherland v. Board of Trustees Bishop Independent School District, 261 S. W. 489	11
Tax Collector v. Finley, 32 S. W. 524	15
Texas Liquor Control Board v. Warfield, 111 S. W. (2) 862	11
Travellers Protective Assn. of America v. Ziegler, 250 S. W. 1115	15
Vernon's Texas Civil Statutes Article 1024b	2, 4
Wilson v. Underhill, 131 S. W. (2) 19	11

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The Attorney General of the State of Texas, on behalf of the State of Texas, and the Permanent School Fund of the State of Texas, and for himself, Gerald C. Mann, Attorney General of Texas, prays that a writ of certiorari do issue to review the judgment of the Circuit Court of Appeals for the Fifth Circuit entered in the above cause on December 18,

1940, reversing the judgment of the District Court for the Southern District of Texas, Brownsville Division.

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of Texas, Brownsville Division, (R. 52) is reported in 35 Fed. Sup. p. 37, and the opinion of the Circuit Court of Appeals for the Fifth Circuit, (R. 71) is reported in 116 Fed. Rep. (2) p. 175.

JURISDICTION

The judgment sought to be reviewed was rendered on December 18, 1940, (R. 79). The jurisdiction of this court is invoked under Section 347 U. S. C. A., Title 28, Sec. 240 of the Judicial Code as amended.

QUESTIONS PRESENTED

Whether or not Article 1024b, Vernon's Texas Statutes, Sup. 1939, Acts 46th Legislature (1939) p. 70, Ch. 1, H. B. No. 492, is void as being in contravention of Article III, Sec. 35, of the Constitution of Texas.

THE FACTS OF THE CASE

On April 23, 1940, the Mission Independent

School District of the City of Mission, State of Texas, filed a petition for confirmation of a plan of composition of its bonded indebtedness, and interest thereon, pursuant to the Second Municipal Bankruptcy Act (11 U. S. C. A., Sections 401-404, Acts August 16, 1937, as amended).

The State of Texas for and on behalf of its Permanent School Fund owned bonds of the district affected in the principal sum of $104,000.00, filed her motion to dismiss the petition for consummation of the plan of composition upon the grounds,

"(1) that petitioner is not authorized by the State law to avail itself of the provisions of the Federal Bankruptcy Act;

"(2) that petitioner is not authorized by State law to take all action necessary to carry out a plan of composition;

"(3) that under the Constitution of Texas no law can be enacted which would directly or indirectly compromise, release or extinguish, in whole or in part, any indebtedness owing it; and

"(4) that in the absence of a State law authorizing the petitioner to file application to compromise its debts, this court lacks jurisdiction to approve said petition." (R. 38, 39).

Thereafter, and on August 23, 1940, the District Judge, the honorable T. N. Kennerly, rendered his

opinion and entered his judgment thereon the following day, dismissing the petition for confirmation of plan of composition filed by the Mission Independent School District, for want of jurisdiction, and denying to said District all the relief therein requested. (R. 52-63).

The Mission Independent School District duly excepted in open court to said judgment and thereafter duly prosecuted its appeal to the Circuit Court of Appeals for the Fifth Circuit, which said Court of Appeals did, on December 18, 1940, deliver its opinion and rendered its final judgment, reversing the judgment of the District Court, and remanding the cause to that court, with direction to proceed in accordance with its opinion. (R. 71 and 79).

SPECIFICATION OF ERROR

The Circuit Court of Appeals erred in holding that H. B. No. 492, Ch. 1 of the Acts of the 46th Legislature of Texas (1939), Article 1024b, Vernon's Annotated Texas Statutes, was void as being in contravention of Article III, Section 35, of the Texas Constitution.

REASONS FOR GRANTING THE WRIT

The decision of the honorable Circuit Court of Appeals is an important one and of far-reaching consequences to the State of Texas, in that it in-

volves potentially many thousands of dollars of municipal bonds owned by the State of Texas for the benefit of its permanent school fund, the exact extent of which, as shown in the opinion of Circuit Judge Sibley, concerned 2,838 Texas municipalities and political subdivisions of the State. (R. 75).

Under the Bankruptcy Act, Section 81, et seq, 11 U. S. C. A., Sections 401 et seq, in pursuance of which the proceedings involved herein were being prosecuted, a State municipality or political subdivision is not authorized to take the benefit of the proceeding in bankruptcy where the State does not consent thereto, or perhaps more properly speaking, where the State forbids its creature to seek a bankruptcy composition, or denies its power to do so therein. (See opinion of Circuit Judge Sibley, 116 Fed. (2) 177, R. 71).

The State of Texas by the enactment of H. B. No. 492, ch. 1, 46 Leg., 1939, p. 70, expressly authorized all municipalities, political subdivisions, and taxing districts in the State to proceed under the applicable statutes of the United States in Federal bankruptcy proceedings to effect a plan for the composition of their indebtedness, but with the express exception or qualification that "this Act shall not apply to any bond or bonds while held by the Permanent School Fund of Texas."

The District Judge held that this proviso, exception or qualification appended to the State's authorization positively forbade such plan for composition by the District, and deprived the District Court

of jurisdiction to approve the same, and accordingly dismissed the petition.

On the other hand, the Circuit Court of Appeals held that the Act was void with respect to the exception, proviso or qualification quoted, and that it was valid with respect to the otherwise unequivocal legislative authority to proceed to effect a plan for the composition of their indebtedness, upon which holding it reversed the judgment of the District Court, with directions to approve the plan in accordance with that court's opinion.

Such holding of the Circuit Court of Appeals is in violation of the established rule of decisions, and therefore laws of Texas, in respect to the grounds of its decisions, and is, moreover, in conflict with a decision of its own, to which decision a writ of certiorari was denied by this court, all as will be more fully shown in the arguments to follow.

We respectfully pray the writ will issue, the judgment of the Circuit Court of Appeals will be reversed, and the judgment of the District Court will be affirmed.

GERALD C. MANN
Attorney General of Texas

GEO. W. BARCUS
CLARENCE E. CROWE
CLAUD O. BOOTHMAN
OCIE SPEER,
Assistant Attorneys General
Attorneys for Petitioners.

BRIEF OF AUTHORITIES AND ARGUMENT

The District Judge in his opinion overruling the attack by the District upon Article 1024b, of Vernon's Civil Statutes, said:

> "Standing upon Gulf Production Co. v. Garrett, 119 Tex. 72, 24 S. W. 2d, 389; Arnold v. Leonard, 114 Tex. 535, 273 S. W. 799; Ward Cattle & Pasture Co. v. Carpenter, 109 Tex. 103, 105, 200 S. W. 521, and other similar cases, the petitioner contends that the Legislative Act of 1939 (Article 1024b) is constitutionally invalid because not enacted in compliance with Section 35 of Article 3 of the Texas Constitution, which declares that no legislative bill shall contain more than one subject which shall be expressed in its title, etc. The facts and the discussion in the opinions in the three named cases show the importance of the provision of the State Constitution mentioned. But they are extreme cases and the rule long recognized in Texas is upheld, i. e., that it is the subject of the bill and not its object or objects that must be expressed in the title, and that if the general and ultimate subject of a particular Act is as a whole expressed in the title, this will support provisions in the body of the Act which are relevant, reasonably germane, complementary, or auxiliary to it. Nowhere do I find the rule respecting this provision of the Texas Constitution better stated than by the Commission of Appeals (holding approved by Supreme Court) in Consolidated Underwriters v. Kirby Lumber Co., 267 S. W. 703, 705, where the Texas authorities will be found cited. See also Hidalgo and Cameron Counties W. C. and I. Dist.

v. American Rio Grande L. & I. Co., 5 Cir., 103 F. 2d, 509, 511, and cases there cited.

"I think the title of the Legislative Act of 1939 (Article 1024b) is sufficient under Section 35, Article 3, of the Texas Constitution."

Circuit Judge Sibley, for the Circuit Court of Appeals, in sustaining the attack upon the constitutionality of that statute, says:

"* * * A legislator reading the title would suppose that the Act was an adjustment of the Act of 1935 to the new bankruptcy amendments whose language it uses. Its real effect is not to authorize, but to withdraw authority from a third of the Texas subdivisions. The title, under the particular legislative circumstances, is misleading and deceptive. It is not a case of original legislation as to which, if the subject is generally stated, qualifications and exceptions germane to it need not be expressed. The situation is more like that dealt with in three recent cases in the Supreme Court of Texas. In Arnold v. Leonard, 114 Tex. 535, 273 S. W. 799, 803, the title stated the subject as authorizing disposition of community property, but the body of the Act went further and changed what should be community property. The court said: 'A caption concealing the true purpose of a statute, and stating an altogether distinct and foreign purpose, is necessarily deceptive, and cannot be sustained as complying with section 35 of article 3 of the Constitution.' So in Ward Cattle & Pasture Co. v. Carpenter, 109 Tex. 103, 104, 200 S. W. 521, the title stated the cattle law was to be amended so as to

include named counties, but the Act also omitted a county previously included. The omission was held not effectual, there being as to it 'a deceptive and misleading title.' And in Gulf Production Co. v. Garrett, 119 Tex. 72, 24 S. W. 2d 389, 390, the title said the Act provided for the filing, recording and preserving of the court records, but the body of it went further and directed the destruction of the record of any case after ten years from its final disposition. The latter provision was held void, the court observing: 'This section of article 3 of the Constitution is intended to prevent clauses from being inserted in the bill of which the title gives no intimation, thereby possibly misleading members of the Legislature of the purpose of the proposed legislation.' We therefore think the strained construction adopted in order to preserve this clause is inadmissible. The clause fails of effect, either because in conflict with the provisions of the bankruptcy act or because inserted contrary to the State Constitution."

We respectfully submit the opinion of the District Judge is based upon the sounder reasoning, and, moreover, is in harmony with the established rule of decisions in this State upon the question decided in both opinions.

It is the universal rule of construction of statutes, and specifically made so by statutes of this State, (Rev. Civ. Stat., Art. 10, Sub. 8) that statutes "shall be liberally construed with a view to effect their objects and to promote justice."

The title is as much a part of a statute as is the text itself. Indeed, it is a constitutional requirement. (Const., Art. III, Sec. 35). In arriving at a proper construction of a statute, every part thereof must be considered in the light of every other part, in order to determine the intention of the Legislature. Thus, the title to a bill must be construed in the light of the bill itself to arrive at the intention of the Legislature with respect to the meaning or intention thereof. The same elementary rule of construction applies at this point that applies in the construction of different parts of the text of a statute; that is, where it is reasonably susceptible of two constructions, one of which will destroy the Act and the other will preserve its validity and give meaning to it, the first will be rejected and the latter adopted as the true construction.

The title, therefore, to the Act being considered should be liberally construed as to its sufficiency, and the validity of the Act should be upheld, if it is reasonably capable of such construction.

This rule of liberal construction, even as applied to the title of an Act, is the established law of this State not only in the Supreme Court, the highest court of appeals in civil cases, but likewise in the Court of Criminal Appeals, which is the highest court of appeals in criminal cases.

Some of the cases in civil matters are the following:

Consolidated Underwriters v. Kirby Lumber Co., 267 S. W. 703;

McPherson v. Camden Fire Ins. Co., 222 S. W. 211;

National Live Stock Ins. Co. v. Gomillion, 178 S. W. 1050;

Commonwealth Ins. Co. of New York v. Finegold, 183 S. W. 833;

Altgelt v. Gutzeit, 187 S. W. 220;

Schaff v. Merchant, 250 S. W. 465;

Sutherland v. Board of Trustees Bishop Independent School Dist., 261 S. W. 489;

Board of Insurance Commissioners v. Sproles Motor Freight Lines, 94 S. W. (2) 769;

Harris v. Prince, 98 S. W. (2) 1022, 121 S. W. (2) 983;

Texas Liquor Control Board v. Warfield, 111 S. W. (2) 862;

Wilson v. Underhill, 131 S. W. (2) 19;

Some of the cases by the Court of Criminal Appeals are the following:

Dellinger v. State, 28 S. W. (2) 537;

Katz v. State, 54 S. W. (2) 130;

Archey v. State, 59 S. W. (2) 406;

The District Judge below has given a liberal and reasonable construction to the title in the present instance, whereas the Circuit Judge has adopted a strict construction in violation of the established

rule of decisions in Texas as well as elsewhere.

Now, the title to House Bill No. 492 is as follows:

> "An Act authorizing municipalities, political subdivisions, and taxing districts to effect a plan for the composition of their indebtedness under the provisions of the Federal Bankruptcy laws heretofore enacted by the Congress of the United States; and declaring an emergency."

When the title is liberally (or even reasonably) construed, the subject therein contained is THE AUTHORITY CONFERRED UPON MUNICIPALITIES, POLITICAL SUBDIVISIONS AND TAX DISTRICTS TO EFFECT A PLAN FOR THE COMPOSITION OF THEIR DEBTS UNDER THE FEDERAL BANKRUPTCY LAWS. The bill, therefore, may lawfully contain as many matters as are relevant, germane, complementary, or auxiliary to it. Certainly, any provision relating directly or indirectly to the main subject fairly indicated in the title does not violate Article III, Section 35, of the Constitution. See:

Ex parte White, 198 S. W. 583;

Dark v. Youngblood, 202 S. W. 116;

Ex parte Flake, 149 S. W. 146;

Mosier v. State, 234 S. W. 225;

Consolidated Underwriters v. Kirby Lumber Co., 267 S. W. 703.

In Consolidated Underwriters v. Kirby Lumber

Co., supra, where the opinion of the Commission was expressly approved by the Supreme Court, it is said:

> "Requirements as to the scope of titles have been applied in such manner as to obviate, as best may be, the evils and difficulties that have been mentioned. They have quite uniformly been taken to mean that, if the general and ultimate subject of a particular act as a whole is to be found within the wording of the title, the subject thus expressed, because giving reasonable notice of them, will serve to support provisions in the body of the act (among others not necessary to mention) that are components of the general subject; are reasonably implied by it because they have been connected with and appropriate to it in similar laws or by usage; are relevant and germane to it; are necessary for the attainment of it; are reasonably auxiliary to it; are complementary to it, or are reasonable incidents of it, or of its incidents as expressed in the title."

Many authorities are cited for this statement.

We are not wanting, however, for even more specific holdings with respect to exceptions or provisos contained in a bill but not in the title.

Pottorff v. *El Paso-Hudspeth Counties Road District*, 62 Fed. (2) 498, involved that very question under the Constitution of Texas, here under consideration. It is there said:

> "It is generally held that exceptions need not be set out in the caption of an act. State v. Schlitz Brewing Co., 104 Tenn. 715, 59 S. W.

1033, 78 Am. St. Rep. 941; Austin v. G. C. & S. F. Ry. Co., 45 Tex. 234. The act, though brief, is intended to be comprehensive and all-embracing. It would have failed of the purpose which its caption indicated if it had not made provision by excepting out of the act those situations to which it did not apply."

Certiorari was denied to this decision.

In *Austin* v. *G. C. & S. F. Ry. Co.*, 45 Tex. 234 (267), cited in the Pottorff case, it is said:

> " 'None of the provisions of a statute should be regarded as unconstitutional where they relate, directly or indirectly, to the same subject, have a mutual connection, and are not foreign to the subject expressed in the title.' (Phillips v. Bridge Co. 2 Met. Ky. R. 222; Smith v. Commonwealth, 8 Bush. 112).
>
> " 'So long as the provisions are of the same nature, and come legitimately under one general denomination or object, we cannot say that the act is unconstitutional.' (State v. County Judge, Davis County, 2 Iowa, 284; See also Tadlock v. Eccles, 20 Tex. 792; S. M. Ins. Co. v. New York, 5 Sand., 19)."

The above quotation is itself a quotation from the authorities therein cited, but the Supreme Court of Texas itself further added:

> "Mere limitations and restrictions by proviso, on the general scope of the law as indicated by the body of the act, ordinarily relate and are

germane to its general object, and are of general and universal use, though no references are made to them in the title of the Act."

This holding was made, it will be seen, at a time when our Constitution used the word "object" rather than "subject," as it now does, and it has been held that this change in verbiage renders the Constitution less restrictive (See Travellers Protective Assn. of America v. Ziegler, 250 S. W. 1115).

The same holding is in effect made in *Snyder* v. *Compton*, 28 S. W. 1061, and *Tax Collector* v. *Finley*, 32 S. W. 524.

The case of *State* v. *Schlitz Brewing Co.*, by the Supreme Court of Tennessee, 59 S. W. 1033, is very luminous. It is there said:

"* * * It is of no legal consequence that the present title does not mention the exception, because it is never essential that the title of a bill recite the subdivisions, provisos, and exceptions appearing in its body; and the fact that they do appear without previous mention in no way affects the constitutionality of the act, so long as they are germane to the subject expressed in the title. State v. Brown, 103 Tenn. 450, 53 S. W. 727; Cannon v. Mathes, 8 Heisk. 519; Railroad Co. v. Crider, 91 Tenn. 494, 19 S. W. 618; State v. Yardley, 95 Tenn. 546, 32 S. W. 481, 34 L. R. A. 656. Indeed, every title admits of exceptions in the body of the act, unless it be so framed as to 'specifically and positively' forbid them, as was held to be true of the title

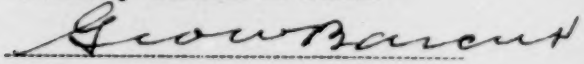
of the act considered in Third Nat. Bank v. Divine Grocery Co., 97 Tenn. 603, 37 S. W. 390, 34 L. R. A. 445. The title of the act now under consideration is not of the latter class. It does not 'specifically and positively,' or in any other manner, forbid the exception; hence the exception, being germane to the subject expressed, is admissible under the title employed. Nor does it matter that the exception appears in a section by itself. The act must be construed as a whole, and when that is done it has precisely the same meaning that it would have if the exception had been appropriately incorporated in the other sections. If the meaning be clear, the relative position of the exception in the enactment is unimportant. Demurrants say that the exception is out of accord with, in antagonism to, and within the contemplation of, the title; but that is a mistake, since, as already stated, the title, though not reciting the exception, legally includes and authorizes it. * * *"

The cases cited and relied upon by Circuit Judge Sibley are not only extreme cases, as pointed out by District Judge Kennerly, but they are easily distinguishable from the present case, in this, that in each of them the title was positively misleading, amounting to deception, thus negativing the conception of notice to legislators interested therein as to pertinent, relevant, complementary, and auxiliary provisions, limitations, exceptions and the like, to be reasonably anticipated in the light of the generality of the statement of the subject. Certainly, a liberal construction of the title, as is required by the established rule in this State, is violated by the

construction adopted by the Circuit Court of Appeals in this case.

Respectfully submitted,

GERALD C. MANN
Attorney General of Texas



GEO. W. BARCUS

CLARENCE E. CROWE

CLAUD O. BOOTHMAN
OCIE SPEER,
Assistant Attorneys General

Attorneys for Petitioners.